

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOSE ANTONETTI,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

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KIMBA M. WOOD, United States District Judge:

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: August 10, 2020

02-CR-1232 (KMW)

18-CV-7239 (KMW)

ORDER

On October 29, 2003, Petitioner Jose Antonetti pleaded guilty to two counts of conspiracy to commit Hobbs Act robbery, in violation of 18 U.S.C. § 1951, and one count of brandishing a firearm during a crime of violence, in violation of 18 U.S.C. § 924(c), predicated on one of the Hobbs Act conspiracy charges. Petitioner was sentenced to 77 months' imprisonment on the Hobbs Act conspiracies and 84 months' imprisonment on the § 924(c) charge, to be served consecutively.

Petitioner, proceeding *pro se*, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2255. (ECF No. 47¹.) On September 30, 2019, Petitioner filed a supplemental brief, in which he argued that his conviction on the § 924(c) charge could not stand under the Supreme Court's decision in *United States v. Davis*, 139 S. Ct. 2319 (2019). (ECF No. 59.) On August 3, 2020, the Government informed the Court that it agrees with Petitioner that his conviction on the § 924(c) charge is invalid under *Davis*. (ECF No. 62.)

Therefore, it is Ordered that:

¹ All references to Petitioner's electronic docket refer to Petitioner's criminal docket.

The Court appoints CJA counsel on duty August 10, 2020, David A. Ruhnke, for the purpose of advising Petitioner in advance of and during resentencing.

The parties shall appear for a hearing on October 20, 2020, at which time the Government will consent to the vacatur of the § 924(c) charge and the Court will resentence Petitioner on the remaining counts of conviction.

A Supplemental Presentence Investigation Report is due to the Court on October 6, 2020.

Any sentencing submissions by Petitioner must be made by October 12, 2020, and must state specifically whether Petitioner contests any fact in the Supplemental Presentence Investigation Report, and whether Petitioner contests the appropriateness of the Probation Officer's Sentencing Recommendation.

Probation should contact Chambers if they experience difficulty in scheduling the presentence interview, or if the Supplemental PSR will not be completed in a timely fashion.

Any response or other submission from the Government is due October 16, 2020.

SO ORDERED.

Dated: New York, New York
August 10, 2020

/s/ Kimba M. Wood
KIMBA M. WOOD
United States District Judge